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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Sethi, et al.

Examiner: Louise N. Leary

Serial No.: 09/780,503

Art Unit: 1654

Filed: February 9, 2001

For: A Method for Detecting Bacterial Lower Respiratory Tract Infections

RESPONSE

Commissioner for Patents  
Washington D.C. 20231

Sir:

In response to the office action of November 19, 2002, Applicants request the Examiner to consider the following:

In the office action, the Examiner rejected claims 1-20 under 35 U.S.C. 103(a) as being obvious over Tsang et al. (Chest/V.117/2, February 2000). Applicants respectfully request the Examiner to reconsider the rejections in view of the following.

The present application claims priority to provisional application serial no. 60/181,620 which was filed on February 10, 2000. Although, not apparent from the reference itself, Tsang et al. was available to the public after February 10, 2000. In support of the publication date of Tsang et al., Applicants have enclosed a three-page document identifying the date on which Tsang et al. was received by the State University of New York at Buffalo's Health Science Library. Page one is a photograph of the cover of the journal in which Tsang et al. was published. The journal cover has the Health Science Library (HSL) date of receipt hand-written

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across the cover (2-22-2K). The volume, issue number and date are visible in the top left-hand portion of the journal's cover. Page two is a photograph of a page in the same issue and also shows the Health Science Library's date stamp of "FEB 22". Page three is a facsimile from Cynthia A Bertuca, the Head of Information Delivery and Access Services at the Health Sciences Library, confirming the receipt date of 2/22/2K. (See highlighted sections).

Based on the above arguments Applicants respectfully submit that Tsang et al. cannot be deemed as prior art for the present application. Accordingly, Applicants request the allowance of claims 1-20.

Applicants request a one-month extension for filing this response. A check for \$55.00 is enclosed for this purpose. If any additional fee is due, please charge to Deposit Account No. 08-2442.

Respectfully submitted,  
HODGSON RUSS LLP

By   
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